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**(1959) 03 KL CK 0039**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 174 of 1958**

Malabar Industrial Co. Ltd.

APPELLANT

Vs

Industrial Tribunal, Trivandrum

RESPONDENT

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**Date of Decision :** 31-03-1959

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 2

**Citation :** AIR 1959 Ker 326

**Hon'ble Judges :** Raman Nayar, J; M.S. Menon, J

**Bench :** Division Bench

**Advocate :** V.K.K. Menon, V.G. Bhaskaran Nair and C.S. Padmanabha Iyer, for the Appellant; Govt. Pleader (for Nos. 1 and 2) and S. Narayanan Potti, (for No. 3), for the Respondent

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## **Judgement**

M.S. Menon, J.—The petitioner is the Malabar Industrial Co. Ltd. which owns and manages the Skinnerpuram Estate, Elamannur. The 1st respondent is the Industrial Tribunal, Trivandrum, the 2nd, the State of Kerala and the 3rd, "the Staff Members of the Skinnerpuram Estate represented by the Estate Staff Union of South India, Kottayam".

2. The petitioner challenges the validity of the award of the Industrial Tribunal, Trivandrum, dated 31-1-1958, in Industrial Disputes No. 3 of 1955. One of the disputes referred for adjudication --the only dispute with which we are concerned--was :

"Whether the dismissal of the following members of the staff is justifiable? If not to what reliefs are the employees entitled?"

"1, Sri C.T. Thomas, Conductor. 2. Sri A.G. Cherian, Conductor. 3. Sri Joseph Mathe, Typist. 4. Kalis Pereira, Maistry. 5. Sri E-Ebey, Asst. Rubber-maker. 8. Sri C. Unnunny, Maistry. 7. Sri P.M. Behanan, Maistry. 8. Sri P.C. Pappey, Watcher. 9. Sri Kunjukutty, Driver. 10. Sri T. Krishnan Nair, Accountant. 11. Sri Peter Pereira,

Typist. 12. Sri V.E. Verghese Maistry. 13. Sri Bhaskara Pillai, Maistry".

3. The Tribunal passed an award on 27-3-(1957 and it was published in the Kerala Gazette dated 23-4-1957. The validity of that award was questioned before this Court in Malabar Industrial Co. Ltd. Vs. Industrial Tribunal, Trivandrum, Paragraph 1 of the judgment in that petition stated :

"We are satisfied that the only question that really arises for consideration is whether seven of the thirteen employees ordered to be reinstated by the Tribunal are workmen as defined in the Industrial Disputes Act, 1947, or not. The seven employees concerned are Nos. 1, 2, 4, 6, 7, 12 and 13 of the employees specified in issue No. 3, namely,

C.T. Thomas, Conductor; A.G. Cherian, Conductor; Kalis Pereira, Maistry; C. Unnunny, Maistry; P.M. Behanan, Maistry; V.E. Varghese, Maistry; and K. Bhaskara Pillai, Maistry".

and paragraph 6 :

"As far as the seven employees mentioned in paragraph 1 above are concerned the Tribunal does not appear to have realised the true test that should be applied before deciding whether a particular employee is employed "to do any skilled or unskilled, manual or clerical work" and in view of that we must quash the award in so far as it relates to those seven employees and direct the Tribunal to pass a fresh award after giving the parties an opportunity to adduce all relevant evidence, oral and documentary, in support of their respective contentions".

4. Subsequently to the judgment both sides adduced evidence before the Tribunal and urged their respective contentions. The Tribunal came to the conclusion that the employees concerned were workmen as defined in the Act. It said :

"What I am directed to do in this case by the High Court is to apply the true test, viz., the main features, pith and substance, of the employment of the category of workmen under reference. I have applied that test to the facts and evidence of this case and have found that the employees involved in this case fall within the definition of a "workman".

It follows that the conductors and maistries under reference (except Behanan Maistry who has already been reinstated) are entitled to all the reliefs granted in my award dated 27-3-1957".

5. The definition of the term "workman" as it stood at the relevant time was in the following terms :

" "Workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled, manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the

Government".

The contention of the petitioner is that the decision of the Tribunal to the effect that the seven employees concerned were workmen within the meaning of the above definition is incorrect) and should be quashed by an appropriate writ or direction from this Court.

6. Counsel for the petitioner concedes that it will not be possible for his client to obtain any relief unless we are prepared to review the evidence adduced and see whether it justifies the conclusion reached by the Tribunal. According to him. We are bound to do so, the decision of the Tribunal being on a collateral fact essential to the very existence of its jurisdiction.

7. Halsbury deals with collateral facts as follows :

"If the fact is collateral to the actual matter which the inferior tribunal has to try that tribunal cannot, by a wrong decision with regard to it, give itself jurisdiction which it would not otherwise possess, unless by statute the inferior tribunal is given power to determine conclusively questions relating to its own jurisdiction. The inferior tribunal must, indeed, decide as to the collateral fact, in the first instance; but the superior Court may upon certiorari inquire into the correctness of the decision, and may quash the proceedings in the lower Court if such decision is erroneous". (3rd Edition, Vol. II, page 143).

8. Dharangadhra Chemical Works Ltd. v. State of Saurashtra AIR 1955 Sau 33 is a direct authority in support of the petitioner's contention, The Judges said :

"Reading the various provisions of the Industrial Disputes Act, 1947, we are clearly of the opinion that the question whether a person is a workman within the definition of the Act is a fact collateral to the assumption of jurisdiction by the Industrial Tribunal and the Tribunal cannot by a wrong decision with regard to it give jurisdiction which it would not otherwise possess. It is competent for this Court on a writ of certiorari to call for and examine the decision of the Industrial Tribunal".

We are in agreement with this view.

9. In Sundar Lal Saxena Vs. The Hindustan Commercial Bank Ltd. and Another, the Court seems to have thought that the question as to whether a particular person is a workman Or not was left by the legislature to the Industrial Tribunal and is not a collateral question. In "Extraordinary Legal Remedies" by Kapur and Mukhi, the authors say (at page 80 of the book):

"It is submitted with respect that the decision does not seem to be correct. The Industrial Disputes Act applies only if a person is a workman and not otherwise. The decision as to whether a person is a workman or not cannot be said to have been left to the final determination of Industrial Tribunal. There is nothing in the Act to suggest that the decision has been left to the Industrial Tribunal. See The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P., .

10. Analogous cases also support the view we have adopted. *Heptulla Brothers Ltd. v. Jambhai Jeshangbhai Thakore* 1956 1 WLR 289, was a case in which the Rent Control Board had jurisdiction only on issues arising between a landlord and tenant. The question as to whether the relationship of landlord, and tenant existed between the parties was held to be collateral. Their Lordships quoted the observations of Lord Esher in *R. v. Commrs. for Special Purposes of the Income Tax* (1888) 21 QBD 813:

"When an inferior Court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists & is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction, But there is another state of things which may exist.

The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none.

In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction, and said :

"In Their Lordships" opinion the present case falls within the first of the two types of cases mentioned by Lord Esher. The question of the relationship of landlord and tenant cannot, therefore, be made *res judicata* by a finding of the Rent Control Board if a superior Court decides that the facts to constitute that relationship do not exist. The finding of the Rent Control Board in these circumstances can never be anything more than a collateral finding which cannot raise a plea of *res judicata*."

The observations of Lord Esher were also quoted with approval by the Supreme Court in *Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers*,

11. In *Nalini Ranjan Guha Vs. Annada Shankar Roy*, the Commissioner for Workmen's Compensation had no jurisdiction in cases of death caused by a war injury. It was held that the question whether an injury was or was not a war

injury was a collateral question. In *Rakhaldas Mukherjee Vs. S.P. Ghose, Sinha, J.*, summarised some of the relevant English cases as follows :

"What is a "collateral" fact, is of course a matter of some difficulty and must depend on the facts of each case. In "*Re Bailey (1854) 3 E1 607*" it was held that in a charge for absenting himself from service, the question whether the defendant was a "servant" was collateral. In *R. v. Manchester Justices (1899) 1 QB 571* "on an application for a license to sell intoxicating liquors to be granted only to the "Real resident and occupier" the question as to who was the real resident and occupier was held to be collateral. In *R. v. Armagh Justices (1924) 2 IR 55 C.A.*" Justices having power to authorise the entry on lands "not being an orchard" it was held that the question as to whether the land in question was an orchard" was a collateral question."

12. If the question as to whether an employee is a "workman" within the meaning of the Industrial Disputes Act, 1947, is a collateral fact which is amenable to review by this Court, if the existence vel non of a jurisdictional fact can be challenged before us, then the evidence on which the Tribunal founded its conclusion should also as a natural corollary be the subject of scrutiny by this Court As pointed out by Louis L. Jaffe in the last of his three Articles on Judicial Review -- 70 *Harvard Law Review* 953 :

"This, of course, does not mean that there is a special measure of review for jurisdictional facts. These are the only facts which are reviewed at all,"

13. The learned Government Pleader drew our attention to *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, the decision of the Supreme Court in the appeal from AIR 1955 Sau 33 which we have mentioned in paragraph 8 of this judgment. We see nothing in the Supreme Court decision which militates against the conclusion we have reached. In *Kaleswari Handloom Factory by Proprietor, P.M.S. Guruswami Nadar and Others Vs. The State of Madras and Others, Rajagopalan, J.* said :

"In my opinion, Industrial Tribunals constituted under the Industrial Disputes Act fall within the scope of the first category mentioned by Lord Ester" 1888) 21 QBD 313,

discussed some of the more important Supreme Court judgments on the subject and observed :

"I am unable to see anything in the later judgment of Bhagwati J., in (*S*) *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, to indicate that the Supreme Court intended to depart from the principles laid down earlier, nor was such a contention pressed before me."

14. The scope and extent of the review of the facts have been dealt with differently by different Judges. In *Elston v. Rose* 1868 4 QB 4, Cock-burn, C.J., said ;

"If there has been a real conflict of testimony upon some fact which goes to the question of jurisdiction, the Court will not interfere except upon very strong grounds";

and Blackburn, J. :

"I am quite prepared to hold that if the evidence upon that point was conflicting, that circumstance, though not conclusive upon us, so as absolutely to deprive us of the discretionary power of granting the prohibition, would so far influence us, that we should require very strong grounds before we should interfere."

In *Turner v. Kingsbury Collieries Ltd.* (1931) 3 KB 169, Mc Cardie, J., went further, and said that a decision on fact could not be questioned on prohibition.

15. In *R. v. Fulham Hammersmith and Kensington Rent Tribunal* (1951) 1 All ER 482, Deylin, J., said that the principles applicable to prohibition and certiorari are the same on this point and :

"Where the question of jurisdiction turns solely on a disputed point of law, it is obviously convenient that the Court should determine it then and there. Where, however, the dispute turns on a question of fact, about which there is a conflict of evidence, the Court will generally decline to interfere."

The comment of Griffith and Street on the observation of Devlin, J. is :

"There is however no reported case on certiorari where the Courts have refused to make a do novo inquiry into the facts. The cases on prohibition relied on by Devlin, J., go no further than to state that prohibition is a discretionary remedy and that in exercising that discretion the Courts should consider whether they will inquire into conflict) of evidence" (*Principles of Administrative Law*, First Edition, page 211). (16) As far as action under Article 226 of the Constitution is concerned we think that the scrutiny of facts found by the Tribunal should be no more and no less than what this Court will undertake in the case of an appeal where appeals are competent. Anything more will be unnecessary, anything less will be insufficient. All this, of course, is subject to the overriding principle that the issue of writs and directions under the Article is in the discretion of the Court,, and cannot be claimed as a matter of right.

17. The further question that has to be decided is whether the evidence adduced will sustain the conclusion that the six employees concerned are workmen as decided in the Industrial Disputes Act, 1947. The test to be applied was stated as follows in *Malabar Industrial Co. Ltd. Vs. Industrial Tribunal, Trivandrum*,

"The designation given to the employee is of course not conclusive. The fact that a person employed in a supervisory capacity does some manual or clerical work: as ancillary or incidental to such an employment will also not bring him within the ambit of the definition. The main "features, the pith and substance, of his employment must be manual or clerical before the definition is attracted."

Of the six employees C.T. Thomas and A.G. Cherian were conductors and the

evidence regarding the work of the conductors on which reliance is placed by counsel for the workmen consists of the testimony of W. W. 6 and W. W. 7 (A.G. Cherian). Their evidence makes it clear that the work of a conductor in the estate is neither manual nor clerical but only, supervisory in character and that the terms of the definition are not fulfilled.

18. The remaining four employees. Kails Pereira, C. Umunny, V.E. Verghese and K. Bhaskara Pillai were maistries. The evidence relating to the duties of the maistries to which our attention has been drawn consists of the testimony of W. W. 5 (Kalis Pereira) and W. W. 8. Their evidence makes it clear that these persons in spite of their designation as maistries get a salary of about Rs. 30/- per month and do earth work and other items of manual labour, very much in the same way as ordinary workmen. In view of this we see no reason for disturbing the conclusion of the Tribunal that they are workmen as defined in the Act.

19. It follows that the award impugned has to be quashed in so far as it relates to C.T. Thomas and A.G. Cherian, conductors, and upheld as regards Kalis Pereira. C. Umnunny, V.E. Verghese and K. Bhaskara Pillai, maistries. Judgment accordingly though in the circumstances of the case without any order as to costs.